

7/3815-25

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

Applicant.

courtesy to the Applicant, took the time and expense to actually prepare and file the extension requests?

Applicant should hardly be heard to complain about the delay in the progress of this opposition proceeding when he himself has previously consented to numerous extension requests. If applicant required quick disposition of his application by the Board, he should not have previously consented to any such extensions of the discovery and trial testimony periods.

In fact, it is the refusal of the Applicant to cooperate with Opposers and reschedule the single trial testimony deposition of Nikki Koval that has forced Opposers to file the instant motion. Prior to filing this motion, the attorneys for Opposers called the attorneys for Applicant to request a brief extension of Opposers' trial testimony period. Applicant denied the extension request without explanation. Sloane Aff. ¶¶ 4-6; Ex. B. Had Applicant cooperated, the deposition of Ms. Koval would surely have taken place by now and, in any event, before the Board rules on this motion to extend.

The case law cited by Applicant in support of its opposition is inapplicable to the instant motion. Applicant cites *Baron Philippe de Rothschild, S.A. v. Styl-Rite Optical Mfg. Co.*, 55 U.S.P.Q.2d 1848 (T.T.A.B. 2000), for the proposition that Opposers should not avoid their discovery responsibilities in this case. Apart from the fact that the discovery period has already passed, and Opposers seek only a short extension of their trial testimony period, the Board in the *Rothschild* case sanctioned a party for failing to comply with an order of the Board. Here, Opposers have not violated any Board order.

Moreover, additional evidence has only just recently been produced by Applicant, further necessitating an extension of Opposers' trial testimony period. Attorneys for Opposers received a letter from the attorneys for Applicant, dated July 22, 2003, enclosing "additional email

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our client received, which were apparently intended for your client.” Sloane Aff. at ¶ 7; Ex. C. Those e-mails reflect actual confusion among consumers between the COSMO.COM mark covered by the application at issue with Opposers and their trademarks. Opposers should now be permitted to amend their Notice of Reliance to include these additional newly discovered e-mails.¹

Indeed, Applicant has withheld producing such additional documents evidencing actual confusion from Opposers despite the fact that Opposers requested such materials many times during discovery. Opposers even filed a cross-motion to compel production of such additional e-mails.² Now that Applicant has finally started producing such additional e-mails to Opposers, after the close of the discovery period, Opposers should be permitted the opportunity to introduce them into evidence to further support their case against registration of the mark COSMO.COM.

Given the fact that Applicant delayed in producing additional evidence of actual confusion to Opposers, and considering that Opposers just recently moved their office for the first time in over fifty years, resulting in the transfer of hundreds of thousands of documents which eventually had to be located, Opposers should be equitably entitled to a short further extension of their trial testimony period to take the deposition of their witness and introduce the newly discovered evidence.

With the above, Opposers continue to respectfully request that the Board grant Opposers’ motion to extend their trial testimony period for two months from the date of the Board’s decision on the motion. In the alternative, Opposers respectfully request that the Board extend their

¹ Opposers filed a Notice of Reliance on July 10, 2003. Exhibit E to the Notice of Reliance consists of copies of e-mails obtained by Opposers from Applicant. Applicant, through his attorneys, stipulated that Opposers may make of record e-mails obtained from Applicant under FRCP 34.

² The Board denied the cross-motion as premature by order dated January 10, 2003.

trial testimony period for such other length of time deemed reasonable to take the trial testimony period of a single witness, Nikki Koval, and now to amend their Notice of Reliance to include the additional e-mails recently disclosed by Applicant.

Dated: August 19, 2003
New York, New York

"Express Mail" mailing label No. EV 325556804 US

Date of Deposit: August 19, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

Peter S. Sloane
(Printed name of person mailing paper or fee)
[Signature]
(Signature)

Respectfully submitted,

[Signature]

Andrew V. Galway

Peter S. Sloane

OSTROLENK, FABER, GERB & SOFFEN, LLP

1180 Avenue of the Americas

New York, New York 10036-8403

Tel: (212) 382-0700


Attorneys for Opposers

08/19/03 09:00:00

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing **OPPOSERS' REPLY TO APPLICANT'S MOTION IN OPPOSITION TO OPPOSERS' MOTION FOR EXTENSION OF TRIAL TESTIMONY PERIODS** was served upon counsel for Applicant this 19th day of August, 2003 by First Class Mail, postage prepaid, as follows:

James F. Gossett, Esq.
ARNSTEIN & LEHR
120 South Riverside Plaza, Suite 1200
Chicago, Illinois 60606-3910


Peter S. Sloane

HEARST COMMUNICATIONS, INC. and
HEARST MAGAZINES PROPERTY, INC.,

Opposition No. 120,453

V.

Applicant.

[illegible]

08-19-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

1. I am an attorney with the law firm of Ostrolenk, Faber, Gerb & Soffen, LLP, Opposers Hearst Communications, Inc. and Hearst Magazines Property, Inc. in this proceeding (hereinafter collectively referred to as “Hearst” or “Opposers”). I hereby Affidavit in support of Hearst’s request for a further two-month extension of the trial deadline beyond the current July 10, 2003 deadline.

2. Over the course of the past several years, Opposers have engaged in periodic settlement discussions with Applicant.

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3. On at least two occasions, Applicant, through his counsel, filed requests to extend the discovery and trial testimony periods. Copies of the extension requests, as filed by Applicant, are attached as Exhibit A.

4. On June 30, 2003, I left a telephone message with James Gossett, an attorney for Applicant, requesting an extension of the trial testimony period of Opposers.

5. The following day, on July 1, 2003, I received an e-mail message from Mr. Gossett apologizing and stating only that "[m]y client says I cannot agree to any further extensions of time." A copy of the e-mail message is attached as Exhibit B.

6. Subsequently, I called Mr. Gossett to explain that only a short extension of time was required to permit the taking of the trial testimony of Nikki Koval. Later that day, Mr. Gossett called back and stated that his client still refused to grant consent for the extension request.

7. I recently received a letter dated July 22, 2003 from Mr. Gossett enclosing e-mail messages. Mr. Gossett explained in his letter that they are "additional email our client received, which were apparently intended for your client." A copy of the letter with its enclosures is attached as Exhibit C.

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Date of Deposit: AUG 19, 2003

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Peter S. Sloane
(Printed name of person mailing paper or fee)
[Signature]
Signature

[Signature]
Peter S. Sloane

Sworn to and subscribed before
me this 19th day of August, 2003

Mary G. Fontenot
Notary Public

MARY G. FONTENOT
Notary Public, State of New York
No. 31-5046328
Qualified in New York County
Commission Expires September 3, 2003

00625293.1

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing **AFFIDAVIT OF**
PETER S. SLOANE was served upon counsel for Applicant this 19th day of August, 2003 by
First Class Mail, postage prepaid, as follows:

James F. Gossett, Esq.
ARNSTEIN & LEHR
120 South Riverside Plaza, Suite 1200
Chicago, Illinois 60606-3910



Peter S. Sloane

06/11/2008 TAD



★ N E W D O C ★

08/24/2003 11:20 AM

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re application of:
Metron, Inc.

Appl. No.: 76/387,849

Filed: March 25, 2002

Mark: **METRON**

Examining Attorney: James T. Griffin

Law Office: 103

Atty. Docket: 2058.0030000/TGD/KNR

Notice of Appeal Under 37 C.F.R. § 2.141

ATTN: BOX TTAB

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Madam:

Pursuant to 37 C.F.R. § 2.141, Applicant hereby appeals to the Trademark Trial and Appeal Board from the decision of the Trademark Examining Attorney, dated February 20, 2003, finally refusing registration of the above-identified service mark. Concurrent with the submission of this Notice of Appeal, Applicant has submitted to the Trademark Examining Attorney a Request for Reconsideration of his final refusal to register the above-referenced mark. Applicant therefore respectfully requests that the Trademark Trial and Appeal Board remand this matter to the Trademark Examining Attorney so that he may act upon the Request for Reconsideration before further action is taken on this appeal.

00729/2003TIA
09/11/03 09:57:00

Metron, Inc.
Appl. No. 76/387,849

-2-

This appeal pertains to the services identified in Class 042 of the application only.

Pursuant to 37 C.F. R. § 2.6(a)(18), fee payment, provided in our accompanying PTO-2038 Credit Card Payment Form in the amount of \$100.00 for the class 042 services, accompanies the instant Notice of Appeal.

Respectfully submitted,



Kimberly N. Reddick
Attorney for Applicant

Date: August 20, 2003

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-2600

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		76/387,849	
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2058.0030000/TGD/KNR		METRON	

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**Sterne Kessler
Goldstein Fox**

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*Admitted only in Maryland
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*Practice limited to
Federal Agencies

TTAB

August 20, 2003

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Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Attn: Box TTAB

Re: U.S. Trademark Application
in the name of Metron, Inc.
Appl. No. 75/387,849; Filed: March 25, 2002
Mark: **METRON (Int'l Classes 009, 035 and 042)**
Our Ref: 2058.0030000/TGD/KNR

Madam:

Transmitted herewith for appropriate action are the following documents:

1. Notice of Appeal Under 37 C.F.R. § 2.141;
2. PTO-2038 Credit Card Payment in the amount of \$100.00 to cover the filing fee;
and
3. One (1) return postcard.

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Commissioner for Trademarks

August 20, 2003

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It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier. The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Kimberly N. Reddick

TGD/KNR/jvb

Enclosures

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